# CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION

## **COMPLAINT NO. R2-2002-0119**

# MANDATORY PENALTY IN THE MATTER OF CITIES OF SOUTH SAN FRANCISCO AND SAN BRUNO NORTH BAYSIDE SYSTEM UNIT SOUTH SAN FRANCISCO AND SAN BRUNO WATER QUALITY CONTROL PLANT SAN MATEO COUNTY

This complaint to assess mandatory minimum penalties (MMPs) pursuant to Water Code Sections 13385 (h) and (i), is issued to the Cities of South San Francisco and San Bruno (hereafter Discharger) based on a finding of violations of Waste Discharge Requirements Order Nos. 97-086 and 98-117 (NPDES No. CA0038130).

## The Executive Officer finds the following:

- 1. On July 16, 1997, the Regional Water Quality Control Board, San Francisco Bay Region, (Regional Board) adopted Waste Discharge Requirements Order No. 97-086, for the Discharger, to regulate discharges of waste from this treatment plant. This order was amended on December 16, 1998 by Order No. 98-117.
- 2. Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.
- 3. Water Code Section 13385(h)(2) defines a serious violation as any waste discharge of a Group I pollutant that exceeds the effluent limitation by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
- 4. Water Code Section 13385(i) requires the Regional Board to assess a MMP of three thousand dollars (\$3,000) for each violation, excepting the first three violations, for any of the following occurrences four or more times in any six-month period:
  - a. Exceeding a waste discharge requirement effluent limitation.
  - b. Failure to file a report pursuant to Section 13260.
  - c. Filing an incomplete report pursuant to Section 13260.
  - d. Exceeding a toxicity discharge limitation where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
- 5. Water Code Section 13385(l) allows the Regional Board, with the concurrence of the discharger, to direct a portion of the penalty amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The discharger may undertake an SEP up to the full

R2-2002-0119 2 / 10

amount of the penalty for liabilities less than or equal to \$15,000. If the penalty amount exceeds \$15,000, the maximum penalty amount that may be expended on an SEP may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.

6. Order No. 97-086 and Order No. 98-117 include the following effluent limitations: **B. Effluent Limitations** (Order No. 97-086)

- 1. The effluent shall not exceed the following limits:
  - a. Settleable Matter monthly average of 0.1 ml/l-hr and a daily maximum of 0.2 ml/l-hr.
- 5. Acute Toxicity

Survival of organisms in undiluted effluent shall be an eleven Sample median value of not less than 90 percent, and an eleven sample 90th percentile value of not less than 70 percent.

7. Cyanide daily average concentration shall not exceed 10 ug/l.

#### Order No. 98-117

Fecal Coliform density – the five day log mean shall not exceed 200 MPN/100 mL and the 90th percentile value of the last 10 samples shall not exceed 400 MPN/100 mL.

- 7. Summary of Effluent Limit Violations: According to monitoring reports received, there were a total of 27 effluent limit violations of the Discharger's NPDES permits during the period between September 1, 2001 and January 31, 2002. There were fifteen cyanide daily maximum violations on December 6 and 7, 2001, November 4, 21 and 26, December 3, 10 and 14, 2002, and January 6, 9, 14, 16, 20, 22 and 30, 2003. There were two fecal coliform 10-sample 90th percentile violations on December 17, 2001 and March 8, 2002. There was one settleable matter daily maximum violation on December 29, 2001, and a monthly average settleable matter violation in December 2001. There were five 11-sample 90th percentile percent survival violations on: June 26, December 2, two on December 5, 2002 and one on January 6, 2003. There were three 11-sample moving median percent survival violations on May 13 and 27, and June 11, 2002. A listing of these violations is presented in Table 1.
- 8. The four cyanide daily maximum violations on December 6, 2001, November 26, 2002 and January 14 and 20, 2003 are non-serious violations because cyanide is a Group II pollutant and the violations do not exceed the effluent limitation by 20% or more. The violations are subject to mandatory penalty under Section 13385 (i) as there have been four or more violations within the respective preceding 180 days. The four non-serious cyanide violations are each subject to a mandatory minimum \$3000 penalty, for a penalty of \$12,000. The eleven cyanide daily maximum violations on December 7, 2001, November 4, and 21, December 3, 10 and 14, 2002, and January 6, 9, 16, 22 and 30, 2003 are serious violations under Section 13385 (h)(1) because cyanide is a Group II pollutant and the violations exceed the effluent limitation by 20% or more. All serious violations are subject to a mandatory minimum \$3,000 penalty under Section 13385 (h) (1), for a

penalty of \$33,000 for the eleven serious cyanide violations. The total penalty for the fifteen cyanide violations is \$45,000.

- 9. The two fecal coliform 10-sample 90th percentile violations on December 17, 2001 and March 8, 2002 are not serious violations under Section 13385 (h)(1). The violations are subject to mandatory penalty under Section 13385 (i) as there have been four or more violations within the preceding 180 days. The MMP for each violation under Section 13385 (i) is \$3,000 for a penalty of \$6,000 for the two fecal coliform violations.
- 10. The two settleable matter violations on December 29 and 31, 2001 are serious violations under Section 13385 (h)(1) because settleable matter is a Group I pollutant and the instantaneous and the monthly average violations exceed the effluent limitation by more than 40%. All serious violations are subject to a MMP of \$3000 under Section 13385 (h) (1), for a penalty of \$6,000 for the two settleable matter effluent limit violations.
- 11. The test 1 species (stickleback) 11-sample 90th percentile percent survival violation on December 5, 2002, and the three test 1 species 11-sample moving median percent survival violations on May 13 and 27, and June 11, 2002, and the four test 2 species (fathead minnow) 11-sample 90th percentile percent survival violation on June 26, December 2 and 5, 2002 and January 6, 2003 are not serious violations under Section 13385 (h)(1). The violations are subject to mandatory penalty under Section 13385 (i) as there have been four or more violations within the preceding 180 days. The MMP for each violation under Section 13385 (i) is \$3,000, for a total penalty of \$24,000 for the eight acute toxicity effluent limit violations.
- 12. <u>Water Code Exception:</u> Water Code Section 13385(j) provides some exceptions related to the assessment of MMP for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.
- 13. <u>MMP Assessment:</u> All twenty-seven of the violations in findings 8, 9, 10 and 11 are subject to a \$3,000 MMP, for a total penalty of \$81,000. The violations and associated fines are summarized in Table 1.
- 14. <u>Suspended MMP Amounts:</u> In lieu of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount of up to \$48,000 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.

### 15. SEP Categories

If the Discharger chooses to propose an SEP, the proposed SEP shall be in one of the following categories:

- 1. Pollution prevention;
- 2. Pollution reduction;
- 3. Environmental clean-up or restoration; and
- 4. Environmental education.

R2-2002-0119 4 / 10

# THE CITIES OF SOUTH SAN FRANCISCO AND SAN BRUNO ARE HEREBY GIVEN NOTICE THAT:

- 1. The Executive Officer proposes that the Discharger be assessed a minimum mandatory penalty in the amount of \$81,000.
- 2. The Regional Board will hold a hearing on this Complaint on September 17, 2003, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checks the appropriate box. By doing so, the Discharger agrees to:
  - a) Pay the full penalty of \$81,000 within 30 days after the signed waiver becomes effective, or
  - b) Propose an SEP in an amount up to \$48,000. Pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$81,000.
- 3. If the Discharger chooses to propose an SEP, it must submit a preliminary proposal by 5:00 p.m., August 16, 2003 to the Executive Officer for conceptual approval. Any SEP proposal shall also conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002 and the attached Standard Criteria and Reporting Requirement for Supplemental Environmental Project. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended penalty of \$48,000. All payments, including any money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
- 4. You can waive the right to a hearing by signing the attached waiver form and checking the appropriate box. By doing so, you agree to pay the liability within 30 days of signing the waiver.
- 5. If a hearing is held, the Regional Board will consider whether to affirm, reject, or modify the proposed penalty, or whether to refer the matter to the Attorney General to have a Superior Court consider imposition of a penalty.

Loretta K. Barsamian
Executive Officer

Anto

R2-2002-0119 5 / 10

Tables: Table 1: Violations - South San Francisco - San Bruno

Attachments: Standard criteria and reporting requirement for supplemental environmental project

Table 1: Violations - South San Francisco - San Bruno

Type of mandatory min. penalty	DATE OF VIOLATION	EFFLUENT LIMITATION DESCRIPTION	EFFLUENT R LIMIT	VALUE	CO Penalty / C Ion-serious	MMENTS comment Serious	Start o
££					Comp.00-09	6	
C1 C2 C3	8/8/01	Test2 Specie Eff 11Samp MovingMed %Sur Total Settleable Solids Eff Instant Maximum ml/l-hr Total Settleable Solids Eff Monthly Average ml/l-hr	Min90 Max0.2 Max0.1	80 20 0.65	Comp.01-15 Comp.01-15 Comp.01-15	0	
C4	12/6/01	Cyanide Eff Daily Maximum ug/l	Max10	11	\$3,000		9-Jun-01
С	12/7/01	Cyanide Eff Daily Maximum ug/l	Max10	430		\$3,000	10-Jun-01
С	12/17/01	Fecal Coliform Eff 10Samp 90th% mpn/100ml	Max400	500	\$3,000		20-Jun-01
s	12/29/01	Total Settleable Solids Eff Daily Maximum ml/l-hr	Max0.2	15		\$3,000	
s	12/31/01	Total Settleable Solids Eff Monthly Average ml/l-hr	Max0.1	0.48		\$3,000	
С	3/8/02	Fecal Coliform Eff 10Samp 90th% mpn/100ml	Max400	1700	\$3,000		9-Sep-01
С	5/13/02	Test1 Specie Eff 11Samp MovingMed %Sur	Min90	80	\$3,000		14-Nov-01
С	5/27/02	Test1 Specie Eff 11Samp MovingMed %Sur	Min90	80	\$3,000		28-Nov-0
С	6/11/02	Test1 Specie Eff 11Samp MovingMed %Sur	Min90	85	\$3,000		13-Dec-0
С	6/26/02	Test2 Specie Eff 11Samp 90th% %Sur	Min70	20	\$3,000		28-Dec-0
s	11/4/02	Cyanide Eff Daily Maximum ug/l	Max10	24		\$3,000	
S	11/21/02	Cyanide Eff Daily Maximum ug/l	Max10	43		\$3,000	
С	11/26/02	Cyanide Eff Daily Maximum ug/l	Max10	11	\$3,000		30-May-0
С	12/2/02	Test2 Specie Eff 11Samp 90th% %Sur	Min70	20	\$3,000		5-Jun-02
s	12/3/02	Cyanide Eff Daily Maximum ug/l	Max10	16		\$3,000	
С	12/5/02	Test1 Specie Eff 11Samp 90th% %Sur	Min70	10	\$3,000		8-Jun-02
С	12/5/02	Test2 Specie Eff 11Samp 90th% %Sur	Min70	0	\$3,000		8-Jun-02
s	12/10/02	Cyanide Eff Daily Maximum ug/l	Max10	31		\$3,000	
s	12/14/02	Cyanide Eff Daily Maximum ug/l	Max10	14		\$3,000	
С	1/6/03	Test2 Specie Eff 11Samp 90th% %Sur	Min70	0	\$3,000		10-Jul-02
s	1/6/03	Cyanide Eff Daily Maximum ug/l	Max10	19		\$3,000	
s	1/9/03	Cyanide Eff Daily Maximum ug/l	Max10	18		\$3,000	
С	1/14/03	Cyanide Eff Daily Maximum ug/l	Max10	11	\$3,000		18-Jul-02
s	1/16/03	Cyanide Eff Daily Maximum ug/l	Max10	12		\$3,000	
С	1/20/03	Cyanide Eff Daily Maximum ug/l	Max10	11	\$3,000		24-Jul-02
s	1/22/03	Cyanide Eff Daily Maximum ug/l	Max10	22		\$3,000	
s	1/30/03	Cyanide Eff Daily Maximum ug/l	Max10	119		\$3,000	
		Number of Chronic Violations Number of Serious Violations			\$42,000	\$39,000	
			To	otal Penalty	•	\$81,000	
fourth	and subseque	lation. First three are not penalized, nt violations are penalized at \$3,000 per violation, lized at \$3,000 per violation.			Previous MMP ( WDRs 97-086, S NPDES No. CA	98-117	18 viols. \$51

#### WAIVER

(The signed waiver will become effective on the day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

- Waiver of the right to a hearing and agree to make payment in full.

  By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0119 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o State Water Resources Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.
- Waiver of the right to a hearing and agreement to make payment and undertake an SEP. By checking the box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. R2-2003-0119, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$48,000. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of a letter from the Executive Officer denying the approval of the proposed SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand that failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

Name (print)	Signature
Date	Title/Organization